

This entire procedure is statutory and inasmuch as the law makes no provision for the return of any proportionate amount of a surplus existing at the end of a school year in the county board of education fund to the districts from which any portion of the fund was retained, neither the auditor nor any other officer has any authority to do so.

Any school district which is qualified, and which desires to become an exempted district must, under the statutes, notify the county board of education to that effect on or before May first of any year. Any such district that had so notified the county board of education would, of course, not be taken into consideration when the certification spoken of in Section 4744-2, General Code, would later be made, and nothing would be retained by the auditor from the funds distributable to that district at semi-annual settlements made after August first of that year by virtue of Section 4744-3, General Code, but I find no provision of law authorizing or directing the county auditor or anyone else to return to such district any proportionate share of a county board of education fund existing at the time the district became an exempted village school district.

I am therefore of the opinion in specific answer to your question that no authority exists for the return to the Chesapeake Union Village School District of any portion of the county board of education fund existing on July 1, 1934, under the circumstances mentioned in your letter.

Respectfully,

JOHN W. BRICKER,

Attorney General.

4168.

APPROVAL, PETITION TO AMEND SECTION 2 OF ARTICLE XII OF THE
CONSTITUTION OF OHIO.

COLUMBUS, OHIO, April 18, 1935.

MR. MARVIN C. HARRISON, *Attorney-at-Law, Guardian Building, Cleveland, Ohio.*

DEAR SIR:—You have submitted for my examination a written petition signed by one hundred qualified electors of this state, containing a measure to be referred and a summary of the same, under the provisions of Section 4785-175, General Code.

It is proposed to amend section 2 of Article XII of the Constitution of Ohio, which amendment shall read as follows:

“BE IT RESOLVED by the people of the State of Ohio; that the Constitution of the State of Ohio be amended by repealing Section 2 of Article XII, and by adopting in its place a new section so that Article XII, Section 2 shall read as follows:

Section 2. No sales tax, so-called, or excise tax upon the sale, purchase, distribution or exchange of personal property or merchandise, shall ever be levied in this state upon the sale, purchase, distribution or exchange of such personal property or articles of merchandise as may properly be termed necessities of life; and specifically, and without intending to enumerate all personal property or articles of merchandise so exempted, no such sales tax shall ever be levied upon the sale, purchase, distribution or exchange of personal prop-

erty or articles of merchandise used for human food or clothing; or as fuel for heating human habitations, factories, or commercial buildings; or in the construction of buildings; or as farm or household tools, implements, furnishings or furniture; or as the tools, machinery or mechanical appliances used in factories or industrial processes; provided however, that nothing herein shall prohibit the imposition of a sales tax upon the sale, purchase or distribution of gasoline or other liquid motor fuel, which tax may in no event exceed the sum of three cents per gallon, and which tax shall be applied solely and exclusively to the construction, improvement, maintenance, repair and supervision of public roads, highways and streets in this state, the indemnification of public charitable hospitals for care of persons injured in accidents upon such public roads, highways and streets, and the necessary expense of collecting and administering said tax fund. Said tax fund shall not be diverted in any part to any other purposes.

No property, whether real, personal, or mixed, which is taxed according to value, shall be so taxed in excess of one and one half per cent of its true value in money for all state and local purposes; but laws may be passed, authorizing additional taxes to be levied outside of such limitations either when approved by a majority of the electors of the taxing district voting on such proposition, or when provided for by the charter of a municipal corporation. In the event that the General Assembly shall provide for the levy of an annual license fee or charge for the licensing and operation of motor vehicles on the highways of this state, such fee or charge on or after January 1, 1936 shall not exceed the sum of five dollars per year for any one such motor vehicle, and shall be in lieu of all other taxes upon the ownership, operation or use of such motor vehicle, except the tax upon the motor fuel thereof. These provisions as to limitation of license fees shall not apply to commercial motor vehicles which are defined to mean any motor vehicles designed and used for carrying merchandise or freight, or more than seven persons, or for carrying passengers for hire.

No excise tax shall be levied upon the sale, purchase, transfer, or conveyance of land or improvements thereon, or any interest therein; but land and improvements thereon shall be taxed by uniform rule according to value; provided, that nothing herein shall prevent the imposition of inheritance taxes as authorized by section seven of this article; and provided further that the General Assembly, in order to promote and encourage the building of improvements, may exempt improvements hereafter made, in part or in whole, and for such period of time as it may fix; and may further exempt improvements now existing which are used exclusively as single or two family dwellings to an amount not in excess of five thousand dollars for any one such building; and provided further, that in order to extend home rule to the various local taxing units of this state, any local taxing district by the approval of a majority of the electors voting upon such proposition, or any municipal corporation when so provided in its charter, may reject any or all of the exemptions of improvements hereinbefore provided for which have been created by the General Assembly; or may in the same manner, exempt all improvements within such local taxing district or municipal corporation, in part or in whole, from taxes for the support of such taxing district or municipal corporation; or may limit such exemptions to any given period after construction or erection; or may limit such exemptions to residential homesteads.

All bonds outstanding on the 1st day of January, 1913, of the state of Ohio

or of any city, village, hamlet, county or township in this state, or which have been issued in behalf of the public schools of Ohio and the means of instruction in connection therewith, which bonds were outstanding on the 1st day of January, 1913 and all bonds issued for World War Compensation Fund, shall be exempt from taxation, and without limiting the general power, subject to the provisions of Article I of this constitution, to determine the subjects and methods of taxation or exemptions therefrom, general laws may be passed to exempt burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose, but all such laws shall be subject to alteration or repeal; and the value of all property so exempted shall, from time to time, be ascertained and published as may be directed by law.

SCHEDULE:

If the votes for the foregoing proposed amendment shall exceed in number those against it, the amendment shall go into effect on January 1st, 1936, and the existing section 2 of Article XII of the Constitution of Ohio shall be repealed and annulled; provided however, that if any portion of this proposed amendment shall be in conflict with any other proposed amendment to the Constitution which is approved by a greater number of electors at the same election, such portion shall be regarded and held as separable from the remainder of this proposed amendment and the remainder of said proposed amendment shall be in force and effect when so approved by a majority of the electors voting thereon despite such conflict with reference to such separable portion."

The summary of this amendment reads as follows:

"The Constitutional Amendment proposed by this Petition repeals Section 2 of Article XII of the Constitution of Ohio, and substitutes in lieu thereof a new Section 2 of Article XII.

It prohibits any sales tax, so-called, or excise tax upon the sale, purchase or exchange of merchandise which may properly be termed necessities of life, and specifically describes as necessities all merchandise used for human food or clothing; or for fuel in houses, factories or commercial buildings; or used in building construction; or in farm or household tools, furnishings or furniture; or in factory or industrial tools or machinery.

It limits the sales tax upon the sale or purchase of gasoline or other liquid motor fuel to three cents per gallon; requires the use of such gasoline sales tax to be used only for the construction, improvement, maintenance, repair and supervision of public roads and highways; for the indemnification of hospitals for care of persons injured in accidents upon public highways and for the expense of its collection and administration.

It limits taxation upon property whether real, personal or mixed, when taxed according to value, to one and one half per cent of the true value of the property; but authorizes additional taxes to be levied outside of such limitations when approved by a majority of the electors of the taxing district, or when so provided in a municipal corporation charter.

It provides that any annual license fee for the operation of motor vehicles, excepting commercial motor vehicles, on the public highways shall be in

lieu of other taxes upon the ownership or operation of such motor vehicles and shall not exceed five dollars per year; and defines commercial motor vehicles to be any motor vehicles designed and used for carrying merchandise or freight, or more than seven persons, or for carrying passengers for hire.

It prohibits the levy of any excise tax upon the sale, purchase, transfer or conveyance of land or improvements thereon or any interest therein; and provides for the taxation of land and improvements thereon by uniform rule according to value; but authorizes the General Assembly in order to promote building, to exempt improvements hereafter made in part or in whole and for such period of time as it may fix, and further authorizes the General Assembly to exempt existing improvements used exclusively for single or two family dwellings to an amount not exceeding five thousand dollars for each such building; provides for home rule in the various taxing units of the state by authorizing any local taxing district, by approval of a majority of the electors voting upon the proposition, or any municipal corporation when so provided in its charter, either to reject any or all of the exemptions so provided by the General Assembly or in the same manner to exempt all improvements within such local taxing district or municipal corporation; in part or in whole, from taxes for the support of such taxing district or municipal corporation; or to limit such exemptions to any given period after construction; or to limit any such exemptions to residential homesteads.

It provides for the exemption from taxation of all bonds outstanding on January 1st, 1913 of the State of Ohio, or any political subdivision of the State of Ohio, or issued in behalf of the public schools of Ohio; and for the exemption from taxation of all bonds issued for the World War Compensation Fund.

It authorizes the passage of general laws to exempt from taxation burying grounds, public school houses, houses used exclusively for public worship, institutions used exclusively for charitable purposes, and public property used exclusively for any public purpose; but with the provision that all such laws of exemption shall be subject to alteration or repeal; and without prohibiting the valuation of all property so exempted and the publication of the facts so ascertained."

I am of the opinion that the foregoing is a fair and truthful statement of the proposed constitutional amendment and accordingly submit for uses provided by law, the following certification:

"Pursuant to the duties imposed upon me under the provisions of Section 4785-175, General Code, I hereby certify that the foregoing summary is a fair and truthful statement of the proposed amendment of section 2 of Article XII of the Constitution of Ohio.

John W. Bricker, Attorney General."

Respectfully,

JOHN W. BRICKER,

Attorney General.